6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2010-0141; FRL-9901-16-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Attainment Plan for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; supplemental.

SUMMARY: EPA is issuing a supplement to its proposed approval of Delaware's state implementation plan (SIP) published in the Federal Register on November 19, 2012. The SIP revision demonstrates Delaware's attainment of the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA-NJ-DE) $PM_{2.5}$ nonattainment area. This supplemental proposal addresses the potential effects of a January 4, 2013 decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) remanding to EPA two final rules implementing the 1997 $PM_{2.5}$ NAAQS on EPA's proposed action. In addition, EPA is revising its proposed approval of Delaware's attainment plan for the 1997 annual $PM_{2.5}$ NAAQS to not rely upon regulations which were part of the plan submitted by Delaware because they are not necessary to demonstrate attainment. Finally, EPA is proposing to approve the 2009 and 2012 motor vehicle emissions budgets (MVEBs) used for transportation conformity purposes for New Castle County in Delaware. EPA is seeking comment only on the issues raised in this supplemental proposal and is not reopening for comment other issues addressed in its prior proposal.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2010-0141** by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov.

C. Mail: **EPA-R03-OAR-2010-0141**, Cristina Fernandez, Associate Director, Office of Air Planning Program, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2010-0141**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of

the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA previously proposed to approve a SIP revision submitted by the State of Delaware to meet the attainment plan requirements for the 1997 annual $PM_{2.5}$ NAAQS for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA-NJ-DE) nonattainment area (the

"Philadelphia Area") on November 19, 2012 (77 FR 69399). Delaware initially submitted the attainment plan on April 3, 2008, and amended it on April 25, 2012, in order to address issues related to MVEBs. This SIP submission did not include the New Source Review (NSR) program requirements for the 1997 $PM_{2.5}$ NAAQS, which the State and EPA have addressed separately.[1]

EPA's November 19, 2012 notice of proposed rulemaking (NPR), proposed to approve Delaware's SIP submission as meeting all relevant statutory and regulatory requirements for attainment plans for the 1997 annual $PM_{2.5}$ NAAQS.[2] EPA stated in the NPR that it had "determined that Delaware's attainment demonstration meets the applicable requirements of the Clean Air Act (CAA), as described in the $PM_{2.5}$ Implementation Rule published on April 25, 2007." Thus, Delaware submitted the attainment plan, and EPA proposed action on that submission, premised upon the belief that attainment plan requirements for the 1997 annual $PM_{2.5}$ NAAQS should be designed to meet, and measured against, the statutory requirements of CAA as interpreted in EPA's existing implementation rules.[3]

Subsequent to Delaware's submission of the attainment plan and EPA's proposed action upon it, however, the D.C. Circuit Court issued a decision with potential impacts on EPA's proposed action. On January 4, 2013, in *NRDC v. EPA*, the D.C. Circuit Court remanded to EPA both the

[1] EPA approved Delaware's SIP submission for the NSR program requirements for the 1997 $PM_{2.5}$ NAAQS on October 2, 2012 (77 FR 60053).

[2] *See* 77 FR 69399. EPA notes that the November 19, 2012 NPR also addressed the MVEBs for transportation conformity purposes for New Castle County, Delaware. EPA is supplementing its proposed action on the MVEBs and is taking additional comment on that portion of the prior proposed action based on EPA's further evaluation of Delaware's proposed MVEBs even though MVEBs are unaffected by the intervening court decision in *NRDC v. EPA*.

[3] EPA notes that although the CAA imposes no statutory duty upon EPA to issue implementation rules or guidance for the $PM_{2.5}$ NAAQS, historically, EPA has elected to issue implementation rules or guidance in order to assist states with the development of SIPs so that both states and EPA can better meet their respective statutory obligations.

"Final Clean Air Fine Particle Implementation Rule" (the "2007 $PM_{2.5}$ Implementation Rule")[4] and the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)" final rule (the "2008 $PM_{2.5}$ NSR/Prevention of Significant Deterioration (PSD) Implementation Rule").[5] The D.C. Circuit Court found that EPA erred in both rules in implementing the 1997 $PM_{2.5}$ NAAQS solely pursuant to the general implementation provisions of subpart 1 of Part D of Title I of the CAA (subpart 1), rather than also pursuant to the implementation provisions specific to particulate matter in subpart 4 of Part D of Title I (subpart 4).[6] As a result, the D.C. Circuit Court remanded both rules and instructed EPA "to repromulgate these rules pursuant to subpart 4 consistent with this opinion." Significantly, the D.C. Circuit Court's decision remanded the rules to EPA and did not vacate them. In a future rulemaking action, EPA intends to respond to the D.C. Circuit Court's remand and to promulgate new implementation regulations for the $PM_{2.5}$ NAAQS in accordance with the requirements of subpart 4. In the interim, one limited purpose of this supplemental rulemaking action on the Delaware attainment plan for the Philadelphia Area is to reevaluate EPA's proposed approval in light of the potential effects of the D.C. Circuit Court's decision on implementation of the 1997 $PM_{2.5}$ NAAQS.

In addition, EPA notes that in a separate rulemaking action, published on February 22, 2013, EPA identified deficiencies associated with several regulations within the approved Delaware SIP including a specific provision within 7-1100-1142 Del. Code Regs § 2 (Regulation 1142, Section 2.0, Control of Nitrogen Oxide (NOx) Emissions from Industrial Boilers and Process

[4] *See* 72 FR 20586, April 25, 2007.
[5] *See* 73 FR 28321, May 16, 2008.
[6] The D.C. District Court's opinion in *NRDC v. EPA* did not expressly consider that implementation under subpart 4 requirements also includes continued application of relevant subpart 1 requirements, to the extent that subpart 4 does not override subpart 1.

Heaters at Petroleum Refineries). *See* 78 FR 12460, February 22, 2013. In that proposed rulemaking action, EPA identified specific Delaware regulations in which state officials are provided unbounded discretion to set alternative emission limits during periods of start-up and shutdown of equipment through a permitting process that does not entail subsequent approval of the alternative emission limits through a SIP submission. EPA has proposed to find that this process constitutes an impermissible director's discretion provision with the potential to allow impermissible discretionary exemptions from SIP emission limits. *See* 78 FR at 12495-12496. Today's rulemaking action providing supplemental analysis and a revised proposal on Delaware's 1997 annual $PM_{2.5}$ attainment plan is separate from the February 22, 2013 action. EPA's action in this supplemental proposal does not reopen the public comment period associated with the separate February 22, 2013 action; nor does today's rulemaking action purport to revise or amend that separate proposed action. EPA will be taking a separate final action on the February 22, 2013 proposed rulemaking action. Today's rulemaking action proposes to revise EPA's original proposal in the November 19, 2012 NPR to propose approval of Delaware's 1997 $PM_{2.5}$ attainment plan as meeting the requirements for attainment plans for the 1997 $PM_{2.5}$ NAAQS, without reliance on certain measures identified in the attainment plan: (1) Regulation 1142 Section 2.0 for NOx emissions at petroleum refineries; (2) certain control measures for volatile organic compound (VOC) emissions; and (3) the Clean Air Interstate Rule (CAIR). These measures are not necessary for the purposes of Reasonably Available Control Measures (RACM), Reasonably Available Control Technology (RACT), section 189(e), or the attainment demonstration. EPA is not relying on Regulation 1142 Section 2.0, the VOC control measures, and CAIR as these measures are not necessary for expeditious attainment of the 1997

$PM_{2.5}$ NAAQS in the Philadelphia Area for the reasons described in detail in this rulemaking action.[7]

Like many of the areas which EPA initially designated nonattainment for the 1997 $PM_{2.5}$ NAAQS, the Philadelphia Area has already attained these NAAQS. EPA has issued both a clean data determination and a determination of attainment for the Philadelphia Area.[8] However, because Delaware has already submitted the attainment plan for the Philadelphia Area, and has not withdrawn it, EPA needs to evaluate the SIP submission for compliance with the CAA. In the context of taking action under section 110(k) to approve or disapprove a previously submitted attainment plan for the 1997 $PM_{2.5}$ NAAQS for an area that has attained the NAAQS, EPA believes that it would be helpful after the D.C. Circuit Court's decision to consider such pending attainment plans in light of the provisions of subpart 4.

Accordingly, EPA has considered possible approaches to evaluating pending attainment plans for the 1997 $PM_{2.5}$ NAAQS that states have already developed and submitted to EPA in reliance on the remanded 2007 $PM_{2.5}$ Implementation Rule. One potential approach would be for EPA to request that the state in question simply withdraw its pending SIP submission *in toto*, engage in a new state rulemaking process to revise and restructure the contents of the submission in order to address subpart 4 requirements explicitly, and then to resubmit the revised submission to EPA. Such an approach could, however, require substantial investment of additional rulemaking resources by both the state and EPA and could inject substantial unwarranted delay into the

[7] As discussed in more detail later in this notice, EPA is also proposing herein to approve the 2009 and 2012 MVEBs for New Castle County in Delaware.
[8] EPA issued both a determination of attainment and a clean data determination for the Philadelphia Area on May 16, 2012 (77 FR 28782).

process. Although such an approach might be appropriate in the case of some nonattainment areas, *e.g.*, those with continuing nonattainment problems for the 1997 $PM_{2.5}$ NAAQS, EPA questions whether this approach would be constructive in all areas. In particular, EPA questions the necessity for such a resource and time intensive approach for areas that are already factually attaining the 1997 $PM_{2.5}$ NAAQS through the attainment plan already adopted and submitted by the state.

An alternative approach would be for EPA to proceed to evaluate the State's existing attainment plan submission for the 1997 $PM_{2.5}$ NAAQS in order to determine whether it would meet not only the applicable requirements of subpart 1, but also meet the applicable requirements of subpart 4. This approach would be consistent with the D.C. Circuit Court's decision that EPA must implement the $PM_{2.5}$ NAAQS consistent with the requirements of subpart 4. As set forth in this rulemaking action, although Delaware's plan was originally submitted to address subpart requirements in light of the important fact that the Area has attained the 1997 $PM_{2.5}$ NAAQS, EPA believes that the submission adequately addresses the requirements of both subparts 1 and 4. In these circumstances, where the existing attainment plan submission is adequate, Delaware and EPA can preserve limited resources for efforts that may be needed to address any ongoing nonattainment problems under the 2006 $PM_{2.5}$ NAAQS and the 2012 $PM_{2.5}$ NAAQS.

EPA intends to provide a comprehensive response to the D.C. Circuit Court's remand in *NRDC v. EPA* in a future rulemaking action. In the interim, EPA will proceed to review attainment plans that have already been submitted but are not yet approved where appropriate. In this supplemental notice, EPA examines the substance of Delaware's SIP submission with regard to

consistency with subpart 4 as well as subpart 1. With respect to the relevant substantive requirements for attainment plans, EPA notes that subpart 1 contains general air quality planning requirements for areas designated nonattainment. By contrast, subpart 4 contains air quality planning requirements specifically applicable to PM_{10} nonattainment areas.[9] Under the D.C. Circuit Court's January 4, 2013 decision in *NRDC v. EPA*, these same statutory requirements also apply for $PM_{2.5}$ nonattainment areas. EPA has longstanding general guidance documents that interpret the 1990 amendments to the CAA, commonly known as the "General Preamble" and the "Addendum," that make recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas including those of subpart 4.[10] In the General Preamble, EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent "subsumed by, or integrally related to, the more specific PM_{10} requirements."[11]

The requirements of subpart 1 for attainment plans include, among other things: (1) Section 172(c)(1) (RACM, RACT, and attainment demonstrations); (2) section 172(c)(2) (reasonable further progress ("RFP")); (3) section 172(c)(3) (emissions inventories); (4) section 172(c)(5) (NSR permit program); and (5) section 172(c)(9) (contingency measures). The subpart 4 requirements for attainment plans are generally comparable, but also impose distinct requirements for nonattainment areas based upon the area's classification as either "moderate" or

[9] PM_{10} refers to particulates nominally 10 micrometers in diameter or smaller. CAA section 302(t).
[10] *See* "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (57 FR 13498, April 16, 1992) (hereafter, General Preamble). EPA notes that it has issued additional guidance for attainment plans for PM_{10} in particular, including extra requirements for areas classified as "serious" nonattainment areas under subpart 4. *See* "State Implementation Plans for Serious PM_{10} Nonattainment Areas, and Attainment Date Waivers for PM_{10} Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (59 FR 41998, August 16,1994) (hereafter, Addendum).
[11] *See* 57 FR 13538.

"serious" and set some specific timing requirements, such as for imposition of control measures. In general, the specific requirements for attainment plans required initially of all areas under subpart 4 include: (1) Section 189(a)(1)(A) (NSR permit program); (2) section 189(a)(1)(B), (attainment demonstration); (3) section 189(a)(1)(C) (RACM and RACT); (4) section 189(c) (RFP and quantitative milestones); and (5) section 189(e) (precursor requirements for major stationary sources). Subpart 4 also includes additional statutory SIP planning requirements in the event that EPA reclassifies a moderate nonattainment area to a serious nonattainment area and in the event the area needs additional extensions of time to attain the NAAQS. The General Preamble and Addendum provide useful additional guidance on the specific subpart 4 statutory requirements.

For the purposes of evaluating the Delaware attainment plan for the Philadelphia Area for the 1997 annual $PM_{2.5}$ NAAQS, EPA believes that the State's submission satisfies the relevant provisions of subpart 4. The analysis supporting this conclusion is described in more detail in this rulemaking action. After addressing the classification of the Area under subpart 4, EPA discusses the pending SIP submission from the perspective of subpart 4 requirements, following the same topic order as the November 19, 2012 NPR: (1) Pollutants addressed; (2) emissions inventory requirements; (3) modeling; (4) RACM and RACT; (5) RFP; (6) contingency measures; and (7) attainment date. For each of these topics, EPA considers the potential impact of the D.C. Circuit Court's decision in *NRDC v. EPA* on EPA's proposed approval of the Delaware attainment plan for the 1997 annual $PM_{2.5}$ NAAQS for the Philadelphia Area.

II. EPA's Analysis

A. Classification

A preliminary step in evaluating the State's attainment plan submission for compliance with subpart 4 requirements is ascertaining the correct classification of the Philadelphia Area as either a "moderate" or a "serious" nonattainment area. EPA's designations for the 1997 annual $PM_{2.5}$ NAAQS did not include any classifications for nonattainment areas, but this Area would automatically have been classified as a "moderate" nonattainment area.[12] Under section 188, the CAA provides that all areas designated nonattainment under subpart 4 should initially be classified "by operation of law" as moderate nonattainment areas, and that they remain classified as moderate nonattainment areas unless and until EPA later reclassifies the area as a serious nonattainment area.[13]

Thus, for purposes of evaluating the attainment plan submitted by Delaware for the Philadelphia Area, EPA believes that it is appropriate to consider the Area as a moderate nonattainment area with regard to the requirements of subpart 4. Sections 189(a) and (c) apply to moderate nonattainment areas and include the following requirements: (1) An approved permit program for construction of new and modified major stationary sources (section 189(a)(1)(A)); (2) an attainment demonstration (section 189(a)(1)(B)); (3) provisions for RACM and RACT (section

[12] EPA notes that in 2005, it was proceeding under the assumption that it was appropriate to implement the 1997 $PM_{2.5}$ NAAQS under subpart 1 and accordingly did not classify areas at the time of the designations.

[13] EPA has already addressed the requirements of section 188 concerning classifications under subpart 4, including the issue of discretionary and mandatory reclassification from moderate to serious, in the General Preamble. *See* 57 FR 13498, at 13537-8. There is no basis to conclude that the Philadelphia Area should be reclassified from moderate to serious. Under section 188(b), EPA has authority to reclassify a moderate area to serious before the attainment date if the Administrator determines that the area cannot attain the NAAQS by the applicable attainment date under section 188(c)(1) for moderate areas, i.e., by the end of the sixth calendar year after designation. Under section 188(b)(2), EPA has a duty to reclassify such a moderate area to serious if the area fails to attain by the applicable attainment date. Because the Philadelphia Area began attaining the 1997 annual $PM_{2.5}$ NAAQS in 2010, and continued to attain in the sixth calendar year following the designation of the area effective in April of 2005, there would therefore be no basis for reclassification of the area to serious and thus no need to require the state to address the statutory requirements for an attainment plan for a serious nonattainment area under subpart 4.

189(a)(1)(C)); (4) RFP and quantitative milestones (section 189(c)); and (5) regulation of $PM_{2.5}$ precursors (in general to meet RACM and RACT requirements and as specifically required for major stationary sources by section 189(e)).[14] Other subpart 1 requirements for attainment plans continue to apply to $PM_{2.5}$ nonattainment areas under subpart 4 and include the following: (1) Emissions inventories (section 172(c)(3)) and (2) contingency measures (section 172(c)(9)).

B. Pollutants Addressed

Another consideration in evaluating the State's attainment plan from the perspective of the D.C. Circuit Court's decision and subpart 4 is the approach to control of $PM_{2.5}$ precursors in the Philadelphia Area. EPA's 2007 $PM_{2.5}$ Implementation Rule included regulatory presumptions concerning certain $PM_{2.5}$ precursors applicable to attainment plans and control measures related to those plans. Specifically, in 40 CFR 51.1002, EPA provided that a state should address sources of $PM_{2.5,}$ sulfur dioxide (SO_2), and NOx emissions in its attainment plan, but that a state was "not required to address VOC [and ammonia] as . . . $PM_{2.5}$ attainment plan precursor[s] and to evaluate sources of VOC [and ammonia] emissions in the State for control measures."

EPA established these presumptions concerning VOCs and ammonia in the 2007 $PM_{2.5}$ Implementation Rule because of uncertainties regarding the emission inventories for these pollutants and the effectiveness of specific control measures in various regions of the country in reducing $PM_{2.5}$ concentrations. EPA also left open the possibility, however, for such regulation of VOC and ammonia emissions as $PM_{2.5}$ precursors in any nonattainment area where that was necessary for purposes of attaining the 1997 $PM_{2.5}$ NAAQS. EPA intended these to be rebuttable

[14] EPA notes that this action does not address the NSR permit program requirements for the 1997 $PM_{2.5}$ NAAQS. Delaware has addressed those requirements in a separate SIP submission which EPA approved on October 2, 2012 (77 FR 60053).

presumptions that either the state or EPA might reverse through notice and comment rulemaking, if that were necessary to provide for attainment in a given nonattainment area. These presumptions were not limited to emissions only from major stationary sources, but rather were presumptions applicable to precursor emissions from any sources of emissions within the area.[15]

EPA's approach to the consideration of $PM_{2.5}$ precursors was called into question in the D.C. Circuit Court's decision in *NRDC v. EPA*. The D.C. Circuit Court's decision made specific reference to both section 189(e) and 40 CFR 51. 1002, and stated that:

> In light of our disposition, we need not address the petitioners' challenge to the presumptions in [40 CFR 51.1002] that volatile organic compounds and ammonia are not $PM_{2.5}$ precursors, as subpart 4 expressly governs precursor presumptions.[16]

Elsewhere in the D.C. Circuit Court's opinion, however, the D.C. Circuit Court explicitly observed that:

> Ammonia is a precursor to fine particulate matter, making it a precursor to both $PM_{2.5}$ and PM_{10}. For a PM_{10} nonattainment area governed by subpart 4, a precursor is presumptively regulated. See 42 U.S.C. § 7513a(e) [section 189(e)].[17]

The D.C. Circuit Court reasoned that EPA's approach to precursors in the 2007 $PM_{2.5}$ Implementation Rule had the effect of reversing the presumption embodied within subpart 4 that

[15] *See* 2007 $PM_{2.5}$ Implementation Rule (72 FR 20586 at 20589 – 97, April 25, 2007).
[16] *NRDC v, EPA*, 706 F.3d 428, 437, n.10.
[17] *NRDC v, EPA*, 706 F.3d 428, 437, n.7.

a state should address PM_{10} precursors unless the state made a specific showing why regulation of a particular precursor is not necessary.[18]

Although the D.C. Circuit Court did not vacate the 2007 $PM_{2.5}$ Implementation Rule, in this interim period while EPA seeks to respond to the D.C. Circuit Court's directive to apply subpart 4, EPA believes it is prudent to evaluate whether an attainment plan adequately addresses precursors under subpart 4 without reliance on the precursor presumptions in 40 CFR 51.1002. The provisions of subpart 4 do not define the term "precursor" for purposes of PM_{10}, nor do they explicitly require the control of any specifically identified particulate matter precursor. However, section 189(e) indicates that consideration of precursors generally is necessary for attainment plans, and explicitly requires the control of the appropriate precursors from major stationary sources, unless there is a demonstration that such major stationary sources do not contribute significantly to nonattainment in the area.[19] EPA has long recognized the scientific basis for concluding that there are multiple precursors to PM_{10}, and in particular to $PM_{2.5}$.[20] $PM_{2.5}$ chemical precursors include SO_2, NOx, VOCs, and ammonia, although in a given nonattainment area, there may be technical or analytical limitations to the effective evaluation or control of one or more of these precursors for regulatory purposes. In the case of $PM_{2.5}$, appropriate control of precursors is important because secondarily formed particles comprise the largest portion of ambient $PM_{2.5}$ concentrations in many nonattainment areas.

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[18] *Id*.

[19] EPA notes that it has already addressed the requirements of subpart 4 for precursors, specifically within the context of the requirements of section 189(e), in the General Preamble. *See* 57 FR at 13539 and 13541- 2.

[20] *See*, *e.g.*, EPA's 2007 $PM_{2.5}$ Implementation Rule at issue in the *NRDC v. EPA* case in which EPA discussed the fact that emissions of SO_2, NOx, VOCs and ammonia are factual and scientific precursors to $PM_{2.5}$, even if that does not necessarily mean that control of all of these precursors would be required for attainment plans, or needed for expeditious attainment of the NAAQS in all areas. *See* 72 FR 20586, at 20589 – 97.

While subpart 4 expressly requires control of precursors from major stationary sources where direct PM from major sources is controlled unless certain conditions are met, other sources of precursors may also need to be controlled for the purposes of demonstrating attainment as expeditiously as practicable in a given area.[21] Thus, assuming no presumptions under 40 CFR 51.1002, a state should evaluate all economically and technologically feasible control measures for direct $PM_{2.5}$ emissions and $PM_{2.5}$ precursor emissions, and should adopt those measures that are deemed reasonably available, *i.e.*, those constituting RACM and RACT level emissions control for sources located in the area. EPA interprets subpart 4 to require analysis for control of precursors from all source categories in a given nonattainment area, unless there is a demonstration that controlling a precursor or precursors is not necessary for expeditious attainment of the NAAQS in the Area at issue.

In the event that the State's plan includes controls on major stationary sources for PM_{10} in order to achieve timely attainment in the area, section 189(e) requires controls on major stationary sources of all PM_{10} precursors located within the area for all precursors, unless there is a showing that such sources do not contribute significantly to violations in the area. Thus, subject to section 189(e), EPA's existing interpretation of subpart 4 requirements with respect to precursors in attainment plans for PM_{10} as set out in the General Preamble contemplates that states may develop attainment plans that regulate only those precursors that are necessary for purposes of attainment in the area in question, *i.e.*, states may determine that only certain

[21] Thus, for example, states have developed and EPA has approved as meeting requirements of subpart 4, attainment plans that regulated NOx emissions from major stationary, mobile, and area sources in an area in order to provide for expeditious attainment of the applicable NAAQS. *See, e.g.*, "Approval and Promulgation of Implementation Plans for California – San Joaquin Valley PM_{10} Nonattainment Area; Serious Area Plan for Nonattainment of the 24-Hour and Annual PM_{10} Standards," (69 FR 30006, May 26, 2004) (approving a PM_{10} attainment plan that imposes controls on direct PM_{10} and NO_X emissions and did not impose controls on SO_2, VOC, or ammonia emissions).

precursors need be regulated for attainment purposes.[22] Courts have upheld this approach to the requirements of subpart 4 for PM_{10}.[23] EPA believes that application of this same approach to $PM_{2.5}$ precursors under subpart 4 is appropriate and reasonable. Indeed, EPA has already taken action upon attainment plans for the 1997 $PM_{2.5}$ NAAQS in other areas after carefully evaluating the state's conclusions regarding which $PM_{2.5}$ precursors should be regulated in the area at issue.[24]

For the reasons discussed in this section, EPA believes that Delaware's April 2008 attainment plan submission has adequately addressed $PM_{2.5}$ precursors, both for purposes of RACM and RACT controls on appropriate sources for attainment of the NAAQS, and for purposes of section 189(e) with respect to precursors from major stationary sources. In the November 2012 proposed approval of Delaware's attainment plan for the Philadelphia Area, EPA already proposed to concur with the State's approach to regulation of $PM_{2.5}$ precursors. As discussed in that NPR, the State, in accordance with EPA's existing 2007 $PM_{2.5}$ Implementation Rule, addressed regulation of direct $PM_{2.5}$, SO_2, and NOx emissions and elected not to address VOC and ammonia emissions. Although in its SIP submission the State acknowledged that it was relying, in part, on the presumptions established by EPA's implementation rule, the State provided additional substantive justification for its decisions not to regulate VOCs or ammonia as $PM_{2.5}$ precursors in the Delaware attainment plan for the Philadelphia Area.[25]

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[22] *Id.*

[23] *See, e.g.*, *Assoc. of Irritated Residents v. EPA, et al.*, 423 F.3d 989 (9th Cir. 2005).

[24] *See, e.g.*, "Approval and Promulgation of Implementation Plans; California; 2008 San Joaquin Valley $PM_{2.5}$ Plan and 2007 State Strategy," (76 FR 69896, November 9, 2011).

[25] *See* Section 1.4 of the "Delaware State Implementation Plan for Nonattainment of the $PM_{2.5}$ National Ambient Air Quality Standard," dated March 20, 2008, submitted to EPA and included in the docket for this action (hereafter, Delaware SIP Submission).

In light of the D.C. Circuit Court's decision in *NRDC v. EPA*, EPA has again reviewed Delaware's attainment plan, and EPA finds that Delaware's approach to $PM_{2.5}$ precursors is appropriate for this Area and is consistent with the requirements of subpart 4 concerning regulation of precursors without reliance on the presumptions of 40 CFR 51.1002. EPA's proposal to continue to approve the Delaware's attainment plan submission in this supplemental proposal is based on a number of considerations.

First, quality-assured monitoring data establish that the Philadelphia Area has attained and continues to attain the 1997 annual $PM_{2.5}$ NAAQS, through the approach to precursor pollutants adopted by the State in the submitted attainment plan.[26] The State's SIP thus adequately addressed the attainment problem for this NAAQS through controls of direct $PM_{2.5}$, SO_2, and NOx. Given the Area's attainment of the 1997 annual $PM_{2.5}$ NAAQS, it logically follows that no additional controls of other $PM_{2.5}$ precursors are necessary for the Philadelphia Area to timely attain that NAAQS. Because EPA's longstanding approach to precursors under subpart 4, as explained in the General Preamble, authorizes a state to establish that it can attain the NAAQS expeditiously by focusing on some but not all precursors, EPA believes that Delaware's submitted attainment plan for the Philadelphia Area is consistent with this aspect of subpart 4.

Second, EPA believes that the facts and circumstances support the State's decision not to treat VOC and ammonia as $PM_{2.5}$ precursors for purposes of RACM and RACT for attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Philadelphia Area. With respect to VOC, the State already regulates VOC emissions from a broad spectrum of sources in order to meet the ozone NAAQS.

[26] EPA notes that with inclusion of the most recent quality assured and certified data for 2011, the design value for the Philadelphia Area is now, based upon the years 2009 – 2011 is 13.7 micrograms per cubic meter ($\mu g/m^3$). *See* http://www.epa.gov/airtrends /values.html.

This includes control of VOC emissions from sources within the Philadelphia Area, *i.e.*, New Castle County in Delaware.[27] EPA's General Preamble guidance on precursors under subpart 4 advised that a state, in determining whether to address VOCs for purposes of PM_{10}, could take into consideration the existing regulation of VOC emissions for purposes of controlling other pollutants.[28] With respect to ammonia, Delaware's SIP submission indicates that the emissions of ammonia within New Castle County are relatively low from all source categories. The 2002 base year inventory reflects that ammonia emissions in New Castle County were estimated at only 1,384 tons per year (tpy), and this amount is relatively small compared to other precursor emissions such as SO_2 at 50,237 tpy and NOx at 30,784 tpy. Moreover, those emissions of ammonia are distributed across various types of sources and thus are not the result of emissions from a common source or source category.[29]

Third, EPA believes that the wide margin by which the area is attaining the 1997 annual $PM_{2.5}$ NAAQS supports the conclusion that it was not necessary to treat VOCs and ammonia as $PM_{2.5}$ precursors in this area differently for purposes of these NAAQS. The current air quality design value for New Castle County is 10.7 $\mu g/m^3$ (based on 2009-2011 air quality data), which is well below the 1997 annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$. More importantly, the current design value for the entire Philadelphia Area is 13.7 $\mu g/m^3$ (based on 2009-2011 air quality data) which is also well below the 1997 annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$.

In addition to the general approach to precursors, EPA's evaluation of Delaware's attainment plan for the Philadelphia Area also indicates that it is consistent with the specific precursor

[27] *See* Delaware SIP Submission, Section 1.4.2.
[28] *See* General Preamble, 57 FR 13358 and 13359-40.
[29] *See* Delaware SIP Submission, page 34 Table 3-1 and page 35 Table 3-2.

requirements of section 189(e) for major stationary sources. In prior PM_{10} attainment plans under subpart 4, states have considered controls of PM_{10} precursors from various types of sources, including major stationary, mobile, and area sources in the area at issue, as necessary to attain the standard as expeditiously as practicable. Such consideration of potential precursor controls from all sources is relevant to the RACM and RACT and attainment demonstration components of an attainment plan under subpart 4. With respect specifically to controls of those precursors from major stationary sources, CAA section 189(e) explicitly provides that all control requirements for major stationary sources of direct PM_{10} shall also apply to all PM_{10} precursors from those sources, except where EPA determines that emissions of the relevant precursors from the major stationary sources "do not contribute significantly to PM_{10} levels which exceed the standard in the area."

As the State has already attained the 1997 annual $PM_{2.5}$ NAAQS without additional controls of precursors from major stationary sources, EPA believes that the current control measures within the attainment plan are sufficient for purposes of satisfying section 189(e). In EPA's General Preamble guidance for meeting subpart 4 requirements, EPA advised that evaluation of a state's compliance with section 189(e) be based upon the specific facts and circumstances of the particular area at issue.[30] EPA indicated that this determination should take into account any relevant information, including "the significance of precursors to overall attainment."[31]

With respect to the State's decision not to address VOCs from major stationary sources for purposes of attaining the 1997 $PM_{2.5}$ NAAQS, EPA proposes to find that conclusion sufficient

[30] EPA has highlighted this point specifically within the context of the requirements of section 189(e) in the General Preamble. *See* 57 FR 13541- 2.
[31] *See* General Preamble, 57 FR 13539.

for purposes of satisfying section 189(e). The State's SIP submission indicated that it has already adequately regulated VOCs for other NAAQS and this is a valid consideration. Concerning precursor regulation under section 189(e), EPA explicitly recommended in the General Preamble that existing controls of VOCs under other CAA statutory requirements may suffice to relieve a state from the need to adopt VOC controls as precursors to PM_{10} from major stationary sources under section 189(e).[32] With respect to ammonia, the State's evaluation of the Philadelphia Area indicates that there are no major stationary sources of ammonia in New Castle County. Given that no such major sources exist, section 189(e) would not require any additional controls for ammonia. Thus, based upon these facts, EPA believes that the evaluation submitted by the State adequately demonstrates that ammonia controls for major stationary sources are not needed in the Philadelphia Area for purposes of section 189(e) for the 1997 annual $PM_{2.5}$ NAAQS. In the alternative, in light of these facts and circumstances, and because the Area is currently attaining the 1997 annual $PM_{2.5}$ NAAQS, EPA proposes to find that emissions of VOC and ammonia from major stationary sources in Delaware do not contribute significantly to levels exceeding the 1997 annual $PM_{2.5}$ NAAQS at this time in the Philadelphia Area for purposes of section 189(e).

As to complying with section 189(e) for SO_2 and NOx, EPA likewise proposes to find that Delaware has already imposed the requisite level of emissions controls on the relevant categories of major stationary sources located within the Philadelphia Area. EPA notes that it is not relying on one regulation previously approved into the Delaware SIP (Regulation 1142 Section 2.0) as part of the attainment demonstration for the 1997 $PM_{2.5}$ NAAQS because it is not necessary to demonstrate attainment in this area. Through numerous existing regulations or other state

[32] *See* General Preamble, 57 FR 13542.

actions, which are incorporated into Delaware's SIP, Delaware has regulated and is continuing to regulate major stationary sources of SO_2 and NOx in the Philadelphia Area. Taking into consideration the existing regulation of major stationary sources, including those listed below (with the exception of Regulation 1142 Section 2.0), and the fact that the Area has already attained the 1997 $PM_{2.5}$ NAAQS with its current approach to regulation of $PM_{2.5}$ precursors from major stationary sources, EPA believes that it is reasonable to conclude in the context of this action that there is no need to revisit the attainment control strategy with respect to emissions of SO_2 and NOx from major stationary sources in Delaware for the 1997 annual $PM_{2.5}$ NAAQS for purposes of satisfying section 189(e). The SIP currently includes the following precursor controls on major stationary sources:

- Regulation 1146, Electric Generating Unit (EGU) Multi-Pollutant Regulation, SO_2 and NOx emission control (effective December 2007). SIP approved on August 28, 2008 (73 FR 50723).
- Regulation 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions, NOx emission control (effective January 2007). SIP approved on December 10, 2008 (73 FR 66554).
- Regulation 1144, Control of Stationary Generator Emissions, SO_2, PM, VOC, and NOx emission control (effective January 2006). SIP approved on May 29, 2008 (73 FR 23101).
- Regulation 1142, Section 1.0, Control of NOx Emissions from Industrial Boilers, NOx emission control (effective December 2010). SIP approved on June 4, 2010 (75 FR 31711).
- Regulation 1142, Section 2.0, Control of NOx Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, NOx emission control, New Castle County (effective June 2012). SIP approved May 5, 2012 (77 FR 28489).
- Facility and Unit shutdowns (*see* Table 4-3 in the Delaware submittal – NOx, SO_2, $PM_{2.5}$ emission reductions).

- Controls on Residential Woodstoves, 40 CFR Part 60 Subpart AAA - New Source Performance Standards ("NSPS") for PM, VOC, and NOx emission control.
- Regulation 1113, Open Burning Controls, PM, VOC, and NOx emission control (effective October 2007). SIP approved on September 9, 2007 (72 FR 53686).

EPA is not relying on Regulation 1142 Section 2.0 in this evaluation because it is not necessary for the purposes of attainment in this Area. As previously discussed, the Philadelphia Area is attaining the 1997 $PM_{2.5}$ NAAQS. The current design value for the Philadelphia Area is 13.7 $\mu g/m^3$ and the 1997 $PM_{2.5}$ NAAQS is 15.0 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations. Regulation 1142 Section 2.0 applies to NOx emissions at petroleum refineries, but there is only one such petroleum refinery in Delaware. The source is separately subject to a Federally-enforceable Consent Decree and several Consent Decree addendums between the source and EPA which limit NOx emissions and require NOx control measures at several units at the refinery. In addition, the source has a Federally-enforceable permit which limits NOx emissions at the source to 2,525 tpy of NOx. Further, as previously mentioned, the 2002 base year inventory reflects that NOx emissions were 30,784 tpy in New Castle County such that the source's 2,525 tpy of NOx are relatively small in comparison and are already subject to Federally-enforceable controls.

After EPA's analysis of the source's permit limitations on NOx emissions, Federally-enforceable Consent Decree requirements, and present NOx emissions which are relatively small in comparison to NOx emissions in New Castle County, EPA concludes that additional control of NOx emissions at the source is not necessary to attainment or maintenance of the 1997 $PM_{2.5}$ NAAQS in the Philadelphia Area. Therefore, Regulation 1142 Section 2.0 is not needed for

Delaware's attainment demonstration to enable the Philadelphia Area to expeditiously attain as Philadelphia Area has already attained the 1997 annual $PM_{2.5}$ NAAQS nor to show the Philadelphia Area can continue to attain the 1997 annual $PM_{2.5}$ NAAQS.

In summary, the determination whether the regulation of one or more $PM_{2.5}$ precursors is necessary for attainment of the 1997 $PM_{2.5}$ NAAQS must ultimately be evaluated based on the particular facts and circumstances of each area, and upon the emissions reductions needed for that specific NAAQS. Delaware has already addressed emissions of direct $PM_{2.5}$, SO_2, and NOx in the Philadelphia Area and shown that the entire area has attained 1997 annual $PM_{2.5}$ NAAQS without additional regulation of VOCs or ammonia in Delaware for that purpose. Moreover, Delaware has already identified those controls of $PM_{2.5,}$ SO_2, and NOx that it relied upon for attainment of the 1997 annual $PM_{2.5}$ NAAQS, and the fact that the Area is now attaining the NAAQS indicates that these controls were sufficient for this purpose. Under these circumstances, EPA believes that no further evaluation of this issue is necessary at this time for purposes of both attainment and section 189(e) and thus is continuing to propose approval of Delaware's approach to precursors, even taking into account the provisions of subpart 4 with the exception of Regulation 1142 Section 2.0 which EPA is not relying upon because it is not necessary for attainment of the 1997 annual $PM_{2.5}$ NAAQS in this Area.

C. Emissions Inventory Requirement

Section 172(c)(3) of the CAA requires that states submit a comprehensive, accurate, current inventory of actual emissions from all sources in the nonattainment area. Subpart 4 adds no additional emissions inventory requirements. In the General Preamble, EPA stated that section

172(c)(3) applies for purposes of subpart 4, which itself contains no additional emissions inventory requirements for purposes of PM_{10}.[33]

EPA's remanded 2007 $PM_{2.5}$ Implementation Rule required states to meet emissions inventory requirements, including a statewide emissions inventory of direct $PM_{2.5}$ and of all $PM_{2.5}$ precursors, any additional emissions inventory information needed to support an attainment demonstration and RFP requirements, and a baseline (*i.e.*, base year) emissions inventory suitable for the SIP planning requirements for the area at issue.[34] As EPA explained in the preamble to the final 2007 $PM_{2.5}$ Implementation Rule, the emissions inventory requirement includes providing emissions information for direct $PM_{2.5}$, SO_2, NOx, VOCs, and ammonia in order to provide the information necessary for SIP planning, including the need to evaluate which $PM_{2.5}$ precursors a state should regulate in a given nonattainment area.[35]

EPA's November 19, 2012 NPR already proposed approval of Delaware's submission with respect to emissions inventory requirements.[36] EPA explained in that NPR Delaware's emissions inventory information was consistent with EPA's guidance and correctly included the emissions of direct $PM_{2.5}$, SO_2, NOx, VOCs, and ammonia.[37] EPA further explained Delaware's sources of information for emissions for stationary sources, area sources, and mobile sources and

[33] *See* General Preamble, 57 FR 13539. EPA notes, however, that under subpart 4 requirements states may need to submit updated emissions inventories to support later SIP submissions, such as SIP submissions to address the requirements for serious areas under section 189(b)(1), or the requirements for an extension of the serious area attainment date under section 188(e).
[34] *See* 40 CFR 51.1008.
[35] *See* 2007 $PM_{2.5}$ Implementation Rule, 72 FR 20648. EPA noted that the obligation to address all of the scientific precursors of $PM_{2.5}$ was a separate requirement needed to support various regulatory purposes, including the evaluation of whether relying on the rebuttable presumptions for precursors was correct in a given area.
[36] *See* 77 FR 69399, at 69403.
[37] For further details, see the TSD document entitled "Technical Support Document (TSD) for Emissions Inventories for the Delaware Nonattainment Area Particulate Matter ($PM_{2.5}$) State Implementation Plan (SIP) Base Year Inventory," dated June 16, 2012, The TSD is available in the docket online at www.regulations.gov, Docket Number EPA-R03-OAR-2010-0141.

indicated that the State's approach was appropriate. Moreover, EPA has already taken separate final action to approve the base year emissions inventory submitted by Delaware as part of its attainment plan for the 1997 $PM_{2.5}$ NAAQS for the Philadelphia Area.[38]

EPA believes that the D.C. Circuit Court's decision in *NRDC v. EPA* does not affect the emissions inventory requirements for the 1997 $PM_{2.5}$ NAAQS. The D.C. Circuit Court's remand of the 2007 $PM_{2.5}$ Implementation Rule to EPA with instructions to repromulgate implementation regulations consistent with subpart 4 would not result in additional emissions inventory requirements under subpart 4 because none exist. The D.C. Circuit Court's comments on addressing $PM_{2.5}$ precursors consistent with subpart 4 requirements also would not compel a different approach with respect to emissions inventories from that which EPA required under subpart 1. EPA's prior approach under subpart 1 already obligated states to include emissions of direct $PM_{2.5,}$ SO_2, NOx, VOCs, and ammonia in such inventories, and provided no presumptions to exclude precursors from inventories. To the contrary, the emissions inventory requirement includes these precursors to assure adequate information to inform decisions about what pollutants to regulate for purposes of attaining the NAAQS in a given area.

Because the emissions inventories submitted by Delaware for the attainment plan for the 1997 $PM_{2.5}$ NAAQS already included emissions of direct $PM_{2.5,}$ SO_2, NOx, VOCs, and ammonia, EPA concludes that there is no need to reexamine the emissions inventories for the Philadelphia Area.

[38] *See* (78 FR 10420, March 4, 2013).

D. Modeling

As required, Delaware submitted modeling as part of the attainment plan for the Philadelphia Area. Delaware relied upon regional modeling that indicated the entire Philadelphia Area, including New Castle County, would attain the 1997 annual $PM_{2.5}$ NAAQS by 2010. EPA carefully evaluated the State's modeling demonstration and concluded that it adequately supported the State's conclusion that the area would attain the 1997annual $PM_{2.5}$ NAAQS by the projected attainment date.[39]

Accordingly, EPA proposed approval of the State's modeling demonstration in the November 19, 2012 NPR.[40] EPA explained that the State's modeling was consistent with EPA's guidance for such a demonstration, that the State had adequately articulated the bases for its modeling, and that the model supported the conclusion that the area would attain the 1997 annual $PM_{2.5}$ NAAQS by the attainment date. Moreover, EPA noted that the model predicted that the Philadelphia Area would attain the NAAQS comfortably, with a 2009 annual average design value predicted to be 13.3 ug/m^3, and thus well below the level of the 1997 $PM_{2.5}$ NAAQS by the attainment date of April 5, 2010. The model's predictions have proved accurate, and monitoring data showed the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by 2010, and continues to do so.[41]

[39] For further details, see the TSD document entitled "Technical Support Document for the Modeling and Weight of Evidence Portions of the Delaware SIP for Attainment of the $PM_{2.5}$ NAAQS," dated June 15, 2012 (Modeling TSD). The Modeling TSD is available in the docket online at www.regulations.gov, Docket Number EPA-R03-OAR-2010-0141.

[40] *See* 77 FR 69399, at 69404.

[41] For this reason, EPA issued both a determination of attainment and a clean data determination for the Philadelphia Area on May 16, 2012 (77 FR 28782).

EPA believes that the decision in *NRDC v. EPA* does not affect EPA's proposed approval of the attainment demonstration modeling submitted as part of Delaware's attainment plan for the Philadelphia Area. First, section 189(a)(1)(B) provides that for a moderate nonattainment area, a state must submit either "a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date" or "a demonstration that attainment by such date is impracticable." Though not specifically intended to meet section 189(a)(1)(B), the State's modeling demonstrated attainment by a date consistent with that applicable to a moderate nonattainment area.[42] The state supported its demonstration with modeling consistent with EPA's guidance recommendations for this purpose.

Second, the modeling relied upon by the State addressed direct $PM_{2.5}$ and $PM_{2.5}$ precursors. As explained in more detail in the November 19, 2012 NPR, the state relied upon the Community Multi-scale Air Quality Model (CMAQ) modeling conducted by the Mid-Atlantic/Northeast Visibility Union (MANE-VU), using simulations of chemical reactions, emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors, and a sophisticated meteorological model to evaluate $PM_{2.5}$ concentrations over the eastern United States.[43] The MANE-VU modeling included emissions of $PM_{2.5}$, SO_2, NOx, VOCs, and ammonia. The State also used EPA's recommended speciated modeled attainment test ("SMAT") to evaluate ambient $PM_{2.5}$ particles, including eight types of major components of ambient particles including sulfates, nitrates, ammonium, and organic carbon. Thus, the State likewise included evaluation of particles that result from emissions of SO_2, NOx, VOCs, and ammonia through this means. Through this modeling, the State demonstrated

[42] As discussed in section II. H. of this notice, EPA is proposing to find that the State's plan provided for attainment by a date appropriate for a moderate nonattainment area under subpart 4 requirements, given the facts and circumstances of this area.

[43] *See* Modeling TSD at page 4.

attainment through analyses that did not omit consideration of either VOC or ammonia emissions as part of that process.

Because the modeling submitted by Delaware addressed direct $PM_{2.5}$, SO_2, NOx, VOCs, and ammonia, and correctly predicted that the area would attain the 1997 $PM_{2.5}$ NAAQS by 2010, EPA concludes that there is no need to reexamine the attainment plan modeling for the Philadelphia Area. Thus, EPA does not believe that the D.C. Circuit Court's decision in *NRDC v. EPA* should have any bearing on EPA's prior proposed approval of the modeling as meeting CAA requirements in this case.

E. Reasonably Available Control Measures/Reasonably Available Control Technology

Another aspect of Delaware's submitted attainment plan potentially impacted by the *NRDC v. EPA* decision is whether Delaware has adequately addressed the requirement for RACM and RACT for the Philadelphia Area. EPA in this supplemental notice considers this requirement under subpart 4 as well as under subpart 1, and evaluates whether the subpart 4 requirement for RACM and RACT would affect the control measures identified as part of the Delaware attainment plan for the Philadelphia Area. For the following reasons, EPA believes that Delaware's already submitted attainment plan for the Philadelphia Area adequately meets these requirements under subpart 4 for purposes of the 1997 $PM_{2.5}$ NAAQS with the exception of CAIR as previously proposed in the November 19, 2012 NPR, Regulation 1142 Section 2.0 for NOx emissions at petroleum refineries, and certain control measures for VOC emissions as discussed in more detail in this section.

The general SIP planning requirements for nonattainment areas under subpart 1 include section 172(c)(1), which imposes on states an obligation to provide for the implementation of all RACM. Section 172(c)(1) provides, parenthetically, that RACM also includes reductions from RACT. The terms RACM and RACT are not defined within subpart 1 or section 302. However, section 172(c) indicates that what constitutes RACM or RACT is related to what is necessary for attainment in a given area, as the provision explicitly requires that such measures must provide for attainment of the NAAQS in the area covered by the attainment plan.

EPA based its remanded 2007 $PM_{2.5}$ Implementation Rule on the general attainment plan requirement for RACM and RACT in section 172(c). EPA included requirements for the process by which states should determine and establish what control measures would constitute RACM and RACT level controls for appropriate sources in a given nonattainment area for the 1997 $PM_{2.5}$ NAAQS. Specifically, in 40 CFR 51.1010(a), EPA provided that a state should submit a demonstration that it had adopted all RACM and RACT "necessary to demonstrate attainment as expeditiously as practicable and to meet RFP requirements." EPA also required states to include a "list of the potential measures considered by the state, and information and analysis sufficient to support the state's judgment that it has adopted all RACM, including RACT." Moreover, in 40 CFR 51.1010(b), EPA provided that a state could determine that certain otherwise available control measures are not RACM or RACT for sources in the area if, considered cumulatively, the measures not adopted would not advance the attainment date in the area by at least one year.

The SIP planning requirements specific to PM_{10} under subpart 4 likewise impose upon states an obligation to develop attainment plans that impose RACM and RACT on sources within a

nonattainment area. Section 188(a)(1)(C) requires that states with areas classified as moderate nonattainment areas must have SIP provisions to assure that RACM and RACT level controls for PM_{10} are implemented by no later than four years after designation of the area.[44] As with subpart 1, the terms RACM and RACT are not defined within subpart 4. Nor do the provisions of subpart 4 specify how states are to meet the RACM and RACT requirements. However, EPA's longstanding guidance in the General Preamble provides recommendations for appropriate considerations for determining what control measures constitute RACM and RACT for purposes of meeting the statutory requirements of subpart 4.

EPA's existing guidance for RACM and RACT under subpart 4 is comparable to the approach that EPA set forth in the 2007 $PM_{2.5}$ Implementation Rule. EPA's guidance for RACM under subpart 4 in the General Preamble includes: (1) A list of some potential measures for states to consider; (2) a statement of EPA's expectation that the state will provide a reasoned explanation for a decision not to adopt a particular control measure; (3) recognition that some control measures might be unreasonable because the emissions from the affected sources in the area are *de minimis*; (4) an emphasis on state evaluation of potential control measures for reasonableness, considering factors such as technological feasibility and the cost of control; and (5) encouragement that states evaluating potential control measures imposed upon municipal or other governmental entities also include consideration of the impacts on such entities, and the possibility of partial implementation when full implementation would be infeasible (*e.g.*, phased implementation of measures such as road paving).[45]

[44] States with areas later classified as "serious" nonattainment areas under subpart 4 must also develop and submit later plans to meet additional requirements for serious areas, but those are not germane to this action for the reasons discussed in section II.A. of this notice.
[45] *See* General Preamble, 57 FR 13540 – 41.

With respect to RACT requirements, EPA's existing guidance in the General Preamble: (1) Noted that RACT has historically been defined as "the lowest emission limit that a source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility;" (2) noted that RACT generally applies to stationary sources, both stack and fugitive emissions; (3) suggested that major stationary sources be the minimum starting point for a state's RACT analysis; and (4) recommended that states evaluate RACT not only for major stationary sources, but for other source categories as needed for attainment and considering the feasibility of controls.[46]

For both RACM and RACT, EPA notes that an overarching principle is that if a given control measure is not needed to attain the relevant NAAQS in a given area, then by definition that control measure would not be required as RACM or RACT because it would not be reasonable to impose controls that are not in fact needed for attainment purposes. In both the 2007 $PM_{2.5}$ Implementation Rule interpreting the subpart 1 RACM and RACT requirements and the General Preamble making recommendations for the subpart 4 RACM and RACT requirements, the focus is upon the process to identify emissions sources, to evaluate potential emissions controls, and to impose those control measures that are reasonable and that are necessary to bring the area into attainment as expeditiously as practicable, but by no later than the applicable attainment date for the area.

In its submitted attainment plan for the Philadelphia Area, Delaware addressed the RACM and RACT requirements of subpart 1 as interpreted in EPA's remanded 2007 $PM_{2.5}$ Implementation

[46] *See* General Preamble, 57 FR 13541.

Rule. As discussed in more detail in EPA's November 19, 2012 NPR, Delaware followed EPA's recommended process for evaluating which measures would constitute RACM and RACT in the Philadelphia Area. First, Delaware ascertained that emission controls of $PM_{2.5}$, SO_2, and NOx are necessary for attainment in this Area and that controls for ammonia or additional emissions controls for VOCs are not.[47] Second, Delaware evaluated the relevant emissions sources in the area, including "point sources" (*i.e.*, major stationary sources), "non-point sources" (*i.e.*, area sources), non-road mobile sources, and on-road mobile sources. Third, Delaware identified the control measures that it considered to be RACM and RACT for these types of sources in the Philadelphia Area because they were the measures that helped to provide for attainment by the 2010 attainment date. Fourth, Delaware identified and evaluated additional potential control measures and explained why adoption of those measures would not advance the attainment date by at least one year. Through this analytical approach, Delaware's attainment plan identified a suite of control measures already in the State's SIP that helped to bring the Philadelphia Area into attainment for the 1997 $PM_{2.5}$ NAAQS by the applicable attainment date and thus constituted RACM and RACT for the 1997 $PM_{2.5}$ NAAQS for this Area.[48]

EPA has already proposed to find that the Delaware attainment plan for the Philadelphia Area meets the RACM and RACT requirements for the 1997 $PM_{2.5}$ NAAQS, with the exception of one measure that the state identified as a RACM and RACT measure, *i.e.*, CAIR. EPA proposed this approval based upon the State's compliance with the requirements of the now remanded

[47] As discussed in section II.B. of this notice, EPA is proposing to find that the State's determination of which precursors to address was adequately supported, given the facts and circumstances of this Area.

[48] EPA notes that because the State did not need to adopt additional control measures in order to provide for timely attainment in the area, reliance on existing federally enforceable measures already in the SIP was appropriate. Thus, the State's attainment plan submission identified those control measures for $PM_{2.5}$, SO_2, and NOx that achieved the local emissions reductions that helped the area to attain the 1997 $PM_{2.5}$ NAAQS and thus were sufficient to constitute RACM and RACT for sources in the area, with the exception of certain VOC control measures, Regulation 1142 Section 2.0 for petroleum refineries, and CAIR for EGUs.

2007 $PM_{2.5}$ Implementation Rule, but EPA believes that the submitted attainment plan also meets the statutory RACM and RACT requirements of subpart 4 for several reasons.

EPA's longstanding guidance for the determination of RACM and RACT under the statutory requirements of subpart 4 is analogous to that of subpart 1. EPA's General Preamble patterns the process for ascertaining RACM and RACT under subpart 4 after subpart 1, including comparable analytical steps and means for identifying relevant sources and potential control measures for those sources, and for evaluating whether potential control measures are reasonable based upon factors such as technological and economic feasibility. Most importantly, under either subpart, the state is required to determine RACM and RACT measures in light of the emissions reductions needed to bring the area in question into attainment. In other words, the emissions controls necessary to bring the area into attainment are by definition RACM or RACT for such area, and additional controls or other potential combinations of controls that would not be necessary for attainment or to advance attainment are not required for purposes of meeting this component of an attainment plan under either subpart 1 or subpart 4.

As a result of the D.C. Circuit Court's decision in *NRDC v. EPA*, EPA has considered whether the control measures identified by the state as RACM and RACT measures (with the exception of certain VOC control measures, Regulation 1142 Section 2.0, and CAIR for EGUs) would meet the requirements of section 189(a)(1)(C). Given that the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS through the measures already identified in the SIP submission, EPA believes that no further evaluation is necessary. A core principle of the RACM and RACT requirement is that, in addition to other considerations such as the technological feasibility,

economic feasibility, and scheduling feasibility of potential control measures, states and EPA should evaluate the need for those control measures in order to provide for timely attainment of the NAAQS in question. In these circumstances, EPA believes that the attainment of the NAAQS by the projected date in 2010, and the continued attainment of the NAAQS in the area, establishes that the attainment plan contains adequate RACM and RACT measures for purposes of the 1997 $PM_{2.5}$ NAAQS. There is thus no need to consider control of any additional sources, or additional controls on already controlled sources, at this time. Accordingly, the D.C. Circuit Court's decision in *NRDC v. EPA* does not alter the EPA's view of the approvability of the attainment plan with respect to this requirement.

However, EPA's review of the November 19, 2012 NPR concerning the RACM and RACT requirement does indicate the need to revise the proposal with respect to certain control measures included in the list of measures that Delaware identified as RACM and RACT measures for the 1997 $PM_{2.5}$ NAAQS in the Philadelphia Area. Delaware's attainment plan submission identified a number of control measures that are specifically intended to reduce only VOC emissions. The State noted that these measures intended for reduction of ozone "could provide a $PM_{2.5}$ benefit."[49] Because the State also concluded that "Delaware is not regulating VOC emissions as $PM_{2.5}$ precursors under this SIP," however, EPA should not have proposed to approve those control measures that address only VOC emissions as RACM or RACT for the Philadelphia Area specifically for purposes of the 1997 $PM_{2.5}$ NAAQS. Accordingly, EPA is revising the list of measures that it is proposing to approve as RACM and RACT for the 1997 $PM_{2.5}$ NAAQS for the Philadelphia Area to remove the following measures listed in the November 19, 2012 NPR:

[49] *See* Delaware SIP submission at page 15.

- Regulation 1124, Section 11.0, Mobile Equipment Repair and Refinishing, VOC emission control
- Regulation 1124, Section 33.0, Solvent Cleaning and Drying, VOC emission control
- Regulation 1124, Section 36.0, Stage II Vapor Recovery, VOC emission control
- Regulation 1124, Section 46.0, Crude Oil Lightering Operations, VOC emission control
- Regulation 1141, Section 1.0, Architectural and Industrial Maintenance Coatings, VOC emission control
- Regulation 1141, Section 2.0, Consumer Products, VOC emission control
- Regulation 1141, Section 3.0, Portable Fuel Containers, VOC emission control

EPA is also proposing not to rely on Regulation 1142 Section 2.0 or CAIR for EGUs as RACM and RACT in Delaware for the 1997 $PM_{2.5}$ NAAQS but proposes to approve as RACM and RACT the other control measures, including State controls on EGUs, identified in Delaware's SIP Submittal, which were previously approved by EPA as part of the Delaware SIP (*see* 40 CFR 52.420(c)) or are otherwise Federally enforceable, because the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS by the attainment date.

Regulation 1142 Section 2.0 is not needed in the Philadelphia Area as RACM and RACT and therefore EPA is proposing to exclude Regulation 1142 Section 2.0 from this revised proposed approval. Regulation 1142 Section 2.0 applies only to petroleum refineries. There is only one petroleum refinery source in Delaware subject to this regulation. This source's NOx emissions are restricted by a Federally-enforceable permit condition to 2,525 tons per year. The source is separately subject to a Federally-enforceable Consent Decree with several addendums as

discussed above which independently limit NOx emissions and require NOx controls at the source, including units which would be subject to Regulation 1142 Section 2.0. Further, as previously mentioned, the 2002 base year inventory reflects that NOx emissions were 30,784 tpy in New Castle County such that the source's 2,525 tpy of NOx are relatively small in comparison and are already subject to Federally-enforceable controls. EPA has concluded that the source's NOx emissions are insignificant to emissions within Delaware for attaining and maintaining the 1997 $PM_{2.5}$ NAAQS. Therefore, Regulation 1142 Section 2.0 is neither required nor necessary for expeditious attainment of 1997 $PM_{2.5}$ NAAQS, is not reasonably needed as a control measure, and is not required for RACM and RACT for the Philadelphia Area. EPA previously discussed in the November 19, 2012 NPR that it is not relying on CAIR for purposes of meeting RACM and RACT in Delaware for the 1997 $PM_{2.5}$ NAAQS and is not taking additional comment on that issue in this supplemental proposal. The RACM and RACT measures in Delaware for the 1997 $PM_{2.5}$ NAAQS will be the remaining measures listed in the November 19, 2012 NPR with the exception of the control measures for VOC emissions identified above, Regulation 1142 Section 2.0, and CAIR for EGUs.[50]

F. Reasonable Further Progress

Another consideration in evaluating the State's attainment plan from the perspective of the D.C. Circuit Court's decision and subpart 4 is the approach to meeting the reasonable further progress (RFP) requirements of the CAA. EPA's remanded 2007 $PM_{2.5}$ Implementation Rule included regulatory provisions for RFP based upon the subpart 1 statutory requirements of section 172(c)(2) in 40 CFR 51.1009. The regulations provide that if a state's attainment plan demonstrated attainment within five years after designation, then no separate RFP demonstration

[50] *See* 77 FR 69399 at 69406 – 07.

is required. In the event that a state developed a plan with an attainment date projected beyond five years from designation, however, then the regulations require a specific RFP demonstration showing how the control measures in the plan will achieve reductions at specific milestone years of 2009 and 2012, as applicable. If a specific RFP plan were required, it must show generally linear progress in reducing emissions from the base year of the plan until the projected attainment year.

Delaware's April 2008 SIP submission for the Philadelphia Area met the requirements of the 2007 $PM_{2.5}$ Implementation Rule, and EPA has already proposed to approve it for this purpose. In particular, EPA noted that the attainment plan was designed to provide for attainment of the 1997 $PM_{2.5}$ NAAQS within five years of designation and that attainment had in fact occurred. Accordingly, because the Philadelphia Area attained the 1997 $PM_{2.5}$ NAAQS, EPA proposed to determine that the submission met the RFP requirement with the control measures in the plan and that there was no need for additional reductions for purposes of meeting any RFP requirement beyond that date.

As a result of the D.C. Circuit Court's decision in *NRDC v. EPA*, EPA has considered whether Delaware's SIP submission would also meet the RFP requirements of subpart 4 in section 189(c). That section is comparable to the requirements of section 172(c)(1), in that it requires attainment plans under subpart 4 to meet a RFP requirement. However, section 189(c) also provides that an attainment plan should have "quantitative milestones which are to be achieved every 3 years until the area is redesignated to attainment." EPA's General Preamble and

Addendum provide guidance interpreting this statutory provision and are useful to evaluate this requirement of subpart 4.[51]

In particular, EPA's guidance recommendations with respect to section 189(c) include several salient features: (1) That the control measures comprising the RFP should be implemented and in place to meet the milestone requirement; (2) that it is reasonable for the three year periods for milestones to run from the date that the attainment plan submission is due; and (3) that the precise form quantitative milestones should take is not specified and they may take whatever form would allow progress to be quantified or measured adequately.[52]

EPA believes that Delaware's SIP submission adequately meets these requirements for this Area for the 1997 $PM_{2.5}$ NAAQS. First, although not presented as control measures that would achieve reductions by a specified three year milestone, the State's SIP submission contained control measures that were already implemented and in place and thus actually were achieving necessary emission reductions to meet RFP and milestone requirements at the appropriate point in time.

Second, regardless of whether the statutory submission date for the attainment plan were that of subpart 1 or subpart 4, Delaware's attainment plan was achieving emission reductions by the date that would have been three years from such submission date. In other words, regardless of

[51] *See* General Preamble, 57 FR 13539; Addendum, 59 FR 42015-17.

[52] Merely as examples, EPA noted some potential approaches, such as percent implementation of control strategies, percent compliance with implemented control measures, and adherence to a compliance schedule. This list was clearly not exclusive and reflected that the purpose of such milestones is merely to provide an objective way to assess that the area is making progress towards attainment by the applicable attainment date. *See* Addendum, 59 FR 42016.

whether the SIP submission date could have been 18 months from the April 2005 date of the designation (*i.e.*, October 2006), or 36 months from such date (*i.e.*, April 2008), the attainment plan submitted by Delaware in April 2008 included control measures that demonstrated attainment by 2009 and that were achieving emission reductions at that point in time (*i.e.*, by a date three years from when the attainment plan was due under either subpart 1 or subpart 4, or in advance of that date).[53] Because EPA has already determined that the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS based on ambient data from 2007, 2008, and 2009, there would have been no requirement for a second RFP milestone at a six year point.

Third, Delaware's SIP submission provided information sufficient to quantify the amount of emission reductions being achieved. Although not presented for purposes of showing the amount of reductions for a specific three year milestone requirement, the State's SIP submission nonetheless quantified the amount of emission reduction to be achieved through the attainment plan, by pollutant, by 2009.[54] Thus, the attainment plan did quantify the emission reductions that would occur at a point in time that was appropriate for a three year milestone, regardless of what the statutory SIP submission date was under either subpart 1 or subpart 4.

Finally, EPA notes that statutory RFP and milestone requirements of section 189(c) are intended to assure reasonable progress towards attainment. Once an area has already attained the NAAQS, as is the case with the Philadelphia Area for the 1997 $PM_{2.5}$ NAAQS, the intended

[53] EPA notes that at the time of the designations and at the time states were developing their attainment plans for the 1997 $PM_{2.5}$ NAAQS, EPA and states believed that the implementation of the $PM_{2.5}$ NAAQS should proceed under subpart 1. At this juncture, EPA believes that it would be inappropriate to consider the statutory SIP submission date of subpart 4 to be the operative date retroactively. In this instance, it would make no difference with respect to the approvability of the attainment plan in any event.

[54] *See* Delaware SIP submission, page 93, Table 7-1. Comparing the 2002 (base year) and 2009 (attainment year) emissions estimates for New Castle County, the information provided by Delaware indicated reductions of $PM_{2.5}$ (415 tpy or 12.1%,), SO_2 (36,102 tpy or 71.9%), and NOx (8,941 tpy or 29.1%).

purpose for emissions reductions to meet an RFP or milestone requirement is no longer relevant. EPA thus believes that the RFP and milestone requirements are functionally moot once the area has attained the NAAQS. Accordingly, the D.C. Circuit Court's decision in *NRDC v. EPA* does not alter the EPA's view of the approvability of the attainment plan with respect to the RFP and milestone requirements of subpart 4.

G. Contingency Measures

In its SIP submission, Delaware addressed the contingency measure requirements for the Philadelphia Area and EPA has proposed to approve the State's attainment plan with respect to these requirements. The D.C. Circuit Court's decision in *NRDC v. EPA* should have no impacts on the contingency measure requirements for purposes of the $PM_{2.5}$ NAAQS. Section 172(c)(9) imposes the contingency measure requirement for attainment plans and it applies to both subpart 1 and subpart 4. The contingency measure requirement is not superseded or subsumed by subpart 4, and thus there would be no change in this requirement as a result of the *NRDC v. EPA* decision. In addition, EPA notes that it has already determined that the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS and thus the continued need for contingency measures for failure to meet RFP or to attain by the attainment date is moot at this juncture.

H. Attainment Date

In its SIP submission, Delaware provided a demonstration of attainment of the 1997 $PM_{2.5}$ NAAQS in the Philadelphia Area by 2010. Based upon current ambient air quality monitoring

data, the Philadelphia Area in fact attained the 1997 $PM_{2.5}$ NAAQS by 2010 and continues to be in attainment of those NAAQS.[55]

Under either subpart 1 or subpart 4 requirements, a state is required to develop an attainment plan that provides for attainment "as expeditiously as practicable." Under section 172(a)(2)(A), however, subpart 1 requirements impose somewhat different requirements, providing that the area must attain as expeditiously as practicable, but not later than 5 years from the date of designation, with the possibility of extensions of up to 10 years from the date of designation under specified conditions. Under subpart 4, however, Congress created different attainment date requirements for areas classified as "moderate" or "serious" nonattainment areas. Most relevant for this proposal, however, under Section 188(c)(1), a state with a moderate nonattainment area must provide for attainment as expeditiously as practicable, but not later than the end of the sixth calendar year after the date of designation.

In the case of Delaware's attainment plan for the Philadelphia Area, EPA believes that the State has met not only the generally applicable attainment date requirements of subpart 1, but also met the requirements specific to particulate matter in subpart 4. EPA's designations for the 1997 $PM_{2.5}$ NAAQS were effective on April 5, 2005. In the remanded 2007 $PM_{2.5}$ Implementation Rule, EPA indicated that states should develop attainment plans that provided for attainment as expeditiously as practicable, but not later than 5 years after designation, unless an extension of the attainment date was warranted. The State developed an attainment plan that demonstrated attainment of the NAAQS by 2010 and the Area in fact attained by the targeted date. Under

[55] The most recent design value for the Philadelphia Area, based upon the years 2009 – 2011, is 13.7 $\mu g/m^3$. *See* http://www.epa.gov/airtrends /values.html.

section 188(c)(1), a state with a moderate area could, so long as it showed expeditious attainment of the NAAQS, demonstrate attainment up until the end of the sixth calendar year following the designation of the area, *i.e.*, until the end of 2011. Thus, the demonstration that Delaware made here that the Area would attain the 1997 $PM_{2.5}$ NAAQS by the end of 2010 would constitute a demonstration that the Area attained as expeditiously as practicable, but not later than the end of 2011 as required by subpart 4.

Based upon the foregoing reasoning, EPA proposes to find that Delaware's attainment plan SIP submission for the Philadelphia Area factually and functionally meets the attainment date requirements for nonattainment areas under subpart 4, in addition to the requirements under subpart 1. EPA does not believe that the D.C. Circuit Court's decision in *NRDC v. EPA* should have any bearing on EPA's prior proposed approval of the attainment date supported by the attainment plan submission as meeting CAA requirements.

III. Motor Vehicle Emissions Budgets

EPA's November 19, 2012 NPR also proposed approval of Delaware's MVEBs for the Philadelphia Area (*i.e.*, New Castle County in Delaware). However, in the TSD associated with the November 19, 2012 NPR, MVEBs for 2012 were inadvertently used instead of 2009. The correct MVEBs for 2009 are shown in Table 1. Delaware's April 25, 2012 SIP submittal also included Delaware's 2012 MVEBs which were the numbers used in the TSD associated with the November 19, 2012 NPR for 2009. The corrected MVEBs for 2012 are shown in Table 2.

Table 1. Delaware's 2009 Motor Vehicle Emissions Budget for the 1997 $PM_{2.5}$ NAAQS Attainment Plan in tons per year

Plan Submittal	Milestone Year	$PM_{2.5}$	NOx
Attainment Plan	2009	257	8,448

Table 2. Delaware's 2012 Motor Vehicle Emissions Budget for the 1997 $PM_{2.5}$ NAAQS Attainment Plan in tons per year

Plan Submittal	Out Year	$PM_{2.5}$	NOx
Attainment Plan	2012	199	6,273

In this supplemental proposal, EPA proposes to approve Delaware's MVEBs for 2009 (Table 1) and also proposes to approve Delaware's MVEBs for 2012 (Table 2) which Delaware had requested EPA to approve in its April 25, 2012 SIP submission. A supplemental TSD, dated August 26, 2013, discusses EPA's analysis and support for this proposal approving Delaware's MVEBs for 2009 and 2012 and is available on line at www.regulations.gov, Docket No. **EPA-R03-OAR-2010-0141**.

Accordingly, EPA continues to believe that the MVEBs for 2009 meet applicable requirements for such budgets for purposes of the 1997 annual $PM_{2.5}$ NAAQS and asserts the MVEBs for 2012 likewise meet applicable requirements for budgets for transportation conformity purposes for New Castle County in Delaware. As a result of EPA's finding, New Castle County must use the MVEBs from the April 25, 2012 SIP submittal for future conformity determinations for the 1997 annual $PM_{2.5}$ NAAQS.

IV. Summary of Reproposal

Based on the foregoing reasons, EPA proposes to approve the Delaware attainment plan submitted for the Philadelphia Area. EPA believes that the attainment plan submitted by Delaware for the Philadelphia Area, though not expressed in terms of subpart 4 requirements, substantively meets the requirements of that subpart for purposes of approval under section 110(k). EPA is also updating information related to EPA's proposed approval of the MVEBs for New Castle County, Delaware, solely for purposes of transportation conformity for this Area.

EPA solicits comments on this supplemental proposal, but only with respect to the specific issues raised in this rulemaking action. EPA is not seeking comment on any other aspect of the November 19, 2012 NPR as those issues have already been adequately addressed. The purpose of this supplemental proposal is limited to review of the attainment plan submitted by Delaware for the Philadelphia Area in light of the D.C. Circuit Court's decision in *NRDC v. EPA*, EPA's further evaluation of Delaware's submitted attainment plan, and EPA's desire for public input into how it should proceed in light of the *NRDC v. EPA* decision when acting on the pending attainment plan for this Area for the 1997 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those

imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this supplemental proposed rule pertaining to the Delaware 1997 annual $PM_{2.5}$ attainment plan for the Philadelphia Area, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: September 12, 2013

W. C. Early, Acting
Regional Administrator,
Region III.

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